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October 30, 2002

Ms. Rosemary Smith  
Acting Associate General Counsel  
Federal Election Commission  
Office of the General Counsel  
999 E Street, N.W.  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2002 OCT 30 P 2:05

**Re: Advisory Opinion Request**

Dear Ms. Smith:

The Democratic Senatorial Campaign Committee ("DSCC"), the Democratic Congressional Campaign Committee ("DCCC"), the National Republican Senatorial Committee ("NRSC"), and the National Republican Congressional Committee ("NRCC") (collectively, "Party Committees") submit this response to your letter of October 22, 2002 regarding a request for an advisory opinion submitted on behalf of the Party Committees. The request relates to certain contemplated activity in support of recount efforts resulting from the November 5, 2002 general elections in light of the Bipartisan Campaign Reform Act ("BCRA"), which takes effect the day after the November 5 elections. You seek further factual detail as to several matters, including the identities of those federal candidates on whose behalf recount activity is contemplated, and precisely what recount activities are being undertaken or are planned by the Party Committees and their Members.

In Items 1, 1A, 1B, and 1C of your letter, you ask the Party Committees to provide the "names, authorized committees, and addresses of all candidates and authorized committees on whose behalf this request is made" and the office sought by each candidate. Letter from Rosemary Smith, Acting Associate General Counsel, Federal Election Commission, to Robert F. Bauer, Alexander N. Vogel, and Donald F. McGahn II 2 (Oct. 22, 2002). You suggest that if the Party Committees are unable to

Ms. Rosemary Smith  
October 30, 2002  
Page 2

identify all such federal candidates, they should "identify one incumbent and one challenger on whose behalf the advisory opinion is sought." Id. The Party Committees are unable to identify any such candidates, however, for the practical reason that not a single federal candidate will know whether a recount effort is necessary until after BCRA takes effect.

With regard to Item 2, the DSCC and DCCC have established and maintain a separate entity that raises funds from federally permissible sources in amounts exceeding federal contribution limits ("recount funds"), and from which recount funds in support of a recount effort for a particular candidate will be spent until December 31, 2002. The NRSC and the NRCC may establish such entities in the future, but have not done so yet. For the reasons stated above, however, the Party Committees are unable to identify which federal candidates these recount funds will be spent to support.

The Party Committees are unable to provide further information in response to Items 3 through 5, in which you seek information as to the timing of establishment of separate entities to undertake such efforts by state and local party committees and federal candidates. Letter from Rosemary Smith to Messrs. Bauer, Vogel and McGahn 3. Because the candidates themselves do not know whether a recount effort is necessary, neither the state party committees nor federal candidates know at this time whether it is or will be necessary to establish a separate entity for the purpose of carrying out a recount effort.

With respect to Item 6 of your letter, the Party Committees confirm that each of the separate entities that have been established by the Party Committees themselves raise funds from federally permissible sources in amounts exceeding contribution limits, and hold these funds in accounts separate from those holding other funds. The Party Committees also confirm that any such separate entities established, or that will be established, by the Party Committees, state and local party committees, and federal candidates either raises, or will raise, funds from federally permissible sources in amounts exceeding contribution limits. See Letter from Rosemary Smith to Messrs. Bauer, Vogel and McGahn 3. Funds raised into these entities will also be held in accounts separate from those containing other funds.

In response to Item 7, the Party Committees assert that the separate entities referred to in their request anticipate incurring specific expenses traditionally

associated with the undertaking of a recount effort. See Letter from Rosemary Smith to Messrs. Bauer, Vogel and McGahn 3. These include, but are not limited to: legal fees and expenses, fees for the payment of staff, expenses for administrative overhead and office equipment, and any other expenses that may arise in connection with a particular recount effort. The Party Committees confirm that recount funds will be spent solely on expenses incurred with respect to recount efforts, and will not be spent for the purpose of influencing any election for federal office.

Regarding Item 8, the Party Committees assert that it is not possible to know who will control these entities until after November 5—that is, after it is apparent whether a recount is necessary as a result of a particular election. However, as to any such separate entity established by a federal candidate, the candidate himself will be among those who will establish, finance, maintain or control the entities. Letter from Robert F. Bauer, Alexander N. Vogel, and Donald F. McGahn to Lawrence Norton, Esq. 7 (Oct. 17, 2002).

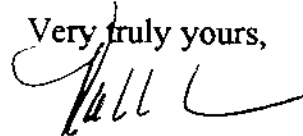
Finally, as to Items 9 and 10, the Party Committees are unable to provide further information as to the names and titles of individuals who will solicit funds for recounts, and what will be done with any recount funds. As they lack knowledge as to whether a recount effort will be necessary, the Party Committees do not know how large a fundraising effort they will undertake with regard to any particular election. It is therefore not possible to know how many individuals will solicit funds, nor whether there will be funds not used for recounts. With regard to any separate entity established by a federal candidate, the candidate himself will be among those who will solicit funds to be used for a recount effort, both before and after November 5.

Those candidates who may be concerned about a close race are unwilling to identify themselves, on the public record, for obvious reasons only days before the general election. The Party Committees, moreover, do not maintain lists of candidates for whom special recount preparations are made prior to Election Day. The Party Committees' experience is that there is no way to predict the races that will result in recounts, much less the ones resulting in significant, costly recounts holding out the possibility of overturning the official results. Yet, in order to address the recounts that do develop, wherever they develop, the Party Committees must clarify the applicable law and conduct their activities in the coming days accordingly. This is a core responsibility of the parties at this time, accepted as such by both the Party Committees and the candidates.

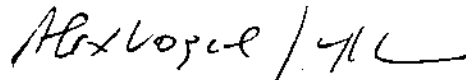
Ms. Rosemary Smith  
October 30, 2002  
Page 4

Please do not hesitate to call us should you have any questions.

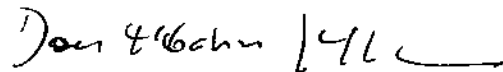
Very truly yours,



Robert F. Bauer  
Counsel to the DSCC and the DCCC



Alexander N. Vogel  
Counsel to the NRSC



Donald F. McGahn II  
Counsel to the NRCC

RFB:rhg

October 22, 2002

VIA EMAIL

Robert F. Bauer  
Counsel  
Democratic Senatorial Campaign Committee and the  
Democratic Congressional Campaign Committee  
Perkins Coie  
607 Fourteenth Street, NW  
Washington, DC 20005-2011

Alexander N. Vogel  
Counsel  
National Republican Senatorial Committee  
425 2<sup>nd</sup> Street, NE  
Washington, DC 20002

Donald F. McGahn II  
General Counsel  
National Republican Congressional Committee  
320 First Street, SE  
Washington, DC 20003

Dear Messrs. Bauer, Vogel, and McGahn:

This refers to your letter dated October 17, 2002, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations regarding the permissible manner of raising and spending money for an election recount under Bipartisan Campaign Reform Act ("BCRA"), which amended the Act, and its implementing regulations. Your letter was styled as an Advisory Opinion Request on behalf of the Democratic Senatorial Campaign Committee ("DSCC"), the Democratic Congressional Campaign Committee ("DCCC"), the National Republican Senatorial Committee ("NRSC") and the National Republican Congressional Committee ("NRCC") (collectively, the "National Party Committees").

The Federal Election Campaign Act of 1971, as amended (the "Act"), authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with

respect to which the request is made." 11 CFR 112.1(c). An authorized agent may submit an advisory opinion request; however, Commission regulations specifically require that the agent shall disclose the identity of his or her principal. 11 CFR 112.1(b). As your letter correctly notes, 11 CFR 112.4(b) provides for the issuance of advisory opinions in twenty days, rather than the customary sixty days, provided the request is submitted by any candidate, including any authorized committee of a candidate (or an agent of either). 11 CFR 112.4(b)(1). This Office is authorized to determine if a request is incomplete or otherwise not qualified as an advisory opinion request. See 11 CFR 112.1(d).

(1). Your letter states it is submitted on behalf of the National Party Committees' "Members who are currently candidates on the November 5 ballot, and other federal candidates on the November 5 ballot who look to the [National] Party Committees for financial and political support." These candidates serve as the basis for your letter's request for expedited review and response. Thus, in order to consider the letter to be a complete advisory opinion request that qualifies for a 20-day response under 11 CFR 112.4(b), please provide the names, authorized committees, and addresses of all candidates and authorized committees on whose behalf this request is made. For each, provide the office sought.

(1A). With respect to the DSCC and the NRSC, your letter states that all incumbent Democratic Senators and all incumbent Republican Senators are members of the DSCC and the NRSC, respectively. Please confirm that because the request is submitted, in part, by those two organizations on behalf of their members who are currently candidates on the November 5, 2002 ballot, all of the 15 Republican and 13 Democratic Senators who are seeking reelection on November 5, 2002 join in the request. In the alternative, please identify the Senators, their authorized committees or agents on whose behalf the advisory opinion is sought.

(1B). Additionally, with respect to the DCCC and the NRCC, your letter states that "many" incumbent Members of the United States House of Representatives are members of their respective party organizations, the DCCC or the NRCC. Please identify the Members, their authorized committees, or agents of each of the DCCC and the NRCC on whose behalf the advisory opinion is sought.

(1C.) If there are reasons that you are unable to identify all federal candidates on whose behalf the advisory opinion is sought, or if to do so would be impracticable, each of the four National Party Committees should identify one incumbent and one challenger on whose behalf the advisory opinion is sought in order to complete the advisory opinion request under 11 CFR 112.1(a) and to provide a basis for expedited treatment under 11 CFR 112.4(b)(1).

(2). You indicate that the National Party Committees "have either established and maintain, or intend to establish and maintain, a separate entity which raises, or will raise, funds from federally permissible sources in amounts exceeding federal contribution

limits ('recount funds'), and which will spend recount funds in support of a recount effort for a particular candidate." Please identify the National Party Committees that have already established such an entity and the related Federal candidates. Identify the National Party Committees that intend to establish such an entity and the related Federal candidates. For each entity, state whether this entity will be established: (A) on or before November 5, 2002; or (B) on or after November 6 and on or before December 31, 2002, or (C) on or after January 1, 2003.

(3). You indicate that state and local party committees "have either established and maintain, or intend to establish and maintain, a separate entity which raises, or will raise, funds from federally permissible sources in amounts exceeding federal contribution limits ('recount funds'), and which will spend recount funds in support of a recount effort for a particular candidate." Please identify at least one state party committee and one local party committee that have already established such an entity and the related Federal candidates. Identify one state party committee and one local party committee that intend to establish such an entity and the related Federal candidates. For each entity, state whether this entity will be established: (A) on or before November 5, 2002; or (B) on or after November 6 and on or before December 31, 2002, or (C) on or after January 1, 2003.

(4). You indicate that Federal candidates "have either established and maintain, or intend to establish and maintain, a separate entity which raises, or will raise, funds from federally permissible sources in amounts exceeding federal contribution limits ('recount funds'), and which will spend recount funds in support of a recount effort for a particular candidate." Please identify at least one Federal candidate that has already established such an entity. Identify one Federal candidate that intends to establish such an entity. For each entity, state whether this entity will be established: (A) on or before November 5, 2002; or (B) on or after November 6 and on or before December 31, 2002, or (C) on or after January 1, 2003.

(5). Your letter states that "[b]ecause of the number of entities that this Request implicates, it is not possible to give a single representational example for purposes of illustration." To the extent you are unable to provide complete responses to paragraphs 2, 3, or 4, please provide as many representational examples as are necessary to cover the types of arrangements that are contemplated for the various issues raised by your letter.

(6). Your letter states that each of the entities "raises, or will raise, funds from federally permissible sources in amounts exceeding federal contribution limits." Please confirm this statement with respect to each of the entities described in response to paragraphs 2, 3, 4, or 5. To the extent existing funds have been identified for these purposes, explain the circumstances under which those funds were raised and how they have been segregated from other funds.

(7). Identify the nature of the specific expenses you anticipate incurring with respect to the recounts, including but not limited to legal fees.

(8). Identify who will establish, finance, maintain, or control the separate entities you identify that will raise and spend recount funds. For each person identified, specify in what capacity they will act and their job title.

(9). Provide the name and title of each individual who will solicit funds for recounts, and indicate the entity on whose behalf these solicitations will be made.

(10). Explain what will be done with any funds not used for recounts.

Upon receiving your complete responses to the above questions, this Office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions about the advisory opinion process or this letter, please contact Duane Pugh, Acting Special Assistant General Counsel, at (202) 694-1650.

Sincerely,

Rosemary C. Smith  
Acting Associate General Counsel



October 17, 2002

Lawrence Norton, Esq.  
Federal Election Commission  
Office of the General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

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2002 OCT 18 A 11:41

**Re: Advisory Opinion Request**

Dear Mr. Norton:

This letter constitutes a request for an advisory opinion on behalf of the Democratic Senatorial Campaign Committee ("DSCC"), the Democratic Congressional Campaign Committee ("DCCC"), the National Republican Senatorial Committee ("NRSC"), and the National Republican Congressional Committee ("NRCC") (collectively, "Party Committees") regarding the permissible manner of raising and spending money for an election recount under the Bipartisan Campaign Reform Act ("BCRA") and its implementing regulations.

The Party Committees submit this request on behalf of their Members who are currently candidates on the November 5 ballot, and other federal candidates on the November 5 ballot who look to the Party Committees for financial and political support. As a result, the Party Committees respectfully request expedited review of and response to this request within twenty days, pursuant to the Commission's rules at 11 C.F.R. § 112.4. The Commission's rules provide that it will issue a written opinion or response within twenty calendar days of receipt of a request provided that the request:

- (1) Is submitted by any candidate, including any authorized committee of the candidate (or agent of either), within the 60 calendar days preceding the date of any election for Federal office in which the candidate is seeking nomination or election; and
- (2) Presents a specific transaction or activity related to the election that may invoke the twenty day period . . .

11 C.F.R. § 112.4.

The DSCC is comprised of sitting Democratic Members of the United States Senate, and includes all incumbent Democratic Senators who are currently federal candidates. The members of the DCCC are sitting Democratic Members of the United States House of Representatives, and also include many incumbent Members who are currently federal candidates. The NRSC is comprised of sitting Republican Members of the United States Senate, and includes all incumbent Republican Senators who are currently federal candidates. The members of the NRCC are sitting Republican Members of the United States House of Representatives, and also include many incumbent Members who are currently federal candidates. As part of their primary function to aid the election of candidates affiliated with their respective parties, the Party Committees provide political and financial support and guidance to incumbent federal candidates, as well as to challengers and to candidates for open congressional seats. As noted above, the Party Committees seek this advisory opinion as agents of these candidates. This Request presents a specific activity related to the November 5 general elections, as it addresses the procedure for funding recounts arising as a result of the November 5 general elections. See 11 C.F.R. § 112.4; Explanation and Justification of the Disclosure Regulations, H.R. Doc. No. 95-44, at 40 (1977) (stating that recounts and election contests are "related to elections").

Under current law established by the Federal Election Campaign Act ("FECA" or "Act") and current Commission rules, gifts, subscriptions, loans, advances, or deposits of money or anything of value made "with respect to" a recount of the results of a federal election are excepted from the definitions of "contribution" and "expenditure." 11 C.F.R. §§ 100.7(b)(20), 100.8(b)(20). The Commission explained in its Explanation and Justification for this rule as to the definition of "contribution" that this is so because recounts and election contests, "though they are related to elections, are not Federal elections as defined by the Act." Explanation and Justification of the Disclosure Regulations, H.R. Doc. No. 95-44, at 40 (1977).

The Commission has long maintained through its regulations and advisory opinions that under current law, a federal candidate who raises and spends funds to defend against an election challenge may establish a separate organizational entity solely for the purpose of carrying out this effort. See, e.g., Advisory Opinions 1998-26, 1978-92. Such an entity need not register and report pursuant to the Act, but may be subject to the rules of the United States Senate and the United States House of Representatives. Id. The entity's funds must come from federally permissible

sources, but the entity may raise funds in increments that exceed the contribution limits of the Act. See 11 C.F.R. §§ 100.7(b)(20), 100.8(b)(20). Because the funds these entities raise and spend are not considered "contributions" or "expenditures" under current law, state and national party committees have also historically established separate accounts for the purpose of raising and spending funds with respect to election recounts.

BCRA becomes effective on November 6, 2002, the day after the 2002 general elections, and will necessarily be in effect during the time of any recount resulting from a November 5 election. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 402, 116 Stat. 81 (2002). BCRA prohibits federal candidates and officeholders and their agents, and any organizations they, or their agents, may establish, finance, maintain, or control, from soliciting, receiving, directing, transferring, spending, or disbursing nonfederal funds after it becomes effective. Pub. L. No. 107-155, § 101; Final Rules for Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49131 (July 29, 2002) (to be codified at 11 C.F.R. pt. 300). BCRA also generally prohibits national party committees from soliciting, receiving, directing, or spending nonfederal funds after November 5, 2002, and restricts the activity that state and local political parties may undertake with regard to federal elections. Pub. L. No. 107-155, § 101; Final Rules, 67 Fed. Reg. at 49122, 49125.

The Party Committees, the state and local party committees to which the Party Committees make contributions, and the federal candidates who are members of the Party Committees each have either established and maintain, or intend to establish and maintain, a separate entity which raises, or will raise, funds from federally permissible sources in amounts exceeding federal contribution limits ("recount funds"), and which will spend recount funds in support of a recount effort for a particular candidate. Because of the number of entities that this Request implicates, it is not possible to give a single representational example for purposes of illustration. Some of these entities will be established before November 5, 2002, and some will be established after November 5, 2002. However, the Party Committees intend that each one of these entities will accept recount funds both before and after November 5, 2002 where possible, and that each one will spend recount funds as necessary after November 5, 2002.

The Party Committees wish to clarify the permissibility of these practices, and to confirm how the Commission will treat the raising and spending of funds for any recounts that may result from the November fifth general elections. To these ends, the Party Committees present several issues:

- 1) The Party Committees would like to confirm that, through November 5, 2002, state, local, and national party committees may raise recount funds into separate accounts to be used to support recount efforts resulting from the November 5, 2002, general elections. The Party Committees also wish to confirm that, pursuant to BCRA and its implementing rules, after November 5, 2002 and until December 31, 2002, a national party committee may use these recount funds to pay expenses, retire debts, or pay for obligations incurred in connection with a recount resulting from any election taking place before November sixth. Finally, the Party Committees wish to confirm that, pursuant to BCRA and its implementing rules, after November 5, 2002, state and local party committees may spend recount funds in support of the recount efforts of a federal candidate.

The Party Committees base their understanding of the current law as it applies through November 5, 2002 on the Commission's rules and precedent, cited above, that establish that donations made with respect to recounts are not considered "contributions" or "expenditures" under the Act. Because recounts are not "Federal elections" under the Act, the Commission has historically endorsed three methods by which recount efforts may be funded apart from a federal candidate's political committee: a) a federal candidate may set up a separate entity, which need not register and report with the Commission, and which may raise and spend recount funds; b) a national party committee may establish and operate such an entity; and c) a state or local party committee may establish an entity to fund a candidate's recount efforts.

The Party Committees wish to confirm their understanding that under BCRA's statutory and regulatory scheme, during the "transition period" from November 6, 2002 through December 31, 2002, a national party committee may spend nonfederal money—including recount funds—it raised before November 6, 2002 to pay expenses, retire debts, or pay for obligations incurred "in connection with" a recount resulting from any election taking place before November sixth. Pub. L. No. 107-155, § 402;

Lawrence Norton, Esq.  
Federal Election Commission  
October 17, 2002  
Page 5

Final Rules, 67 Fed. Reg. at 49123. These funds must be spent before January 1, 2003. Explanation and Justification for Final Rules, 67 Fed. Reg. at 49091.

The Party Committees also wish to confirm their understanding that state and local party committees may spend nonfederal money, including recount funds, in support of a recount effort after November 5, 2002. The Party Committees request confirmation that BCRA's limits and restrictions on the use of a state or local party committee's nonfederal funds in federal elections do not govern a state or local party committee's spending with regard to a recount effort. Such activity does not fall within the definition of "federal election activity," the specifically-enumerated activities of state and local parties with regard to federal elections that BCRA regulates. Pub. L. No. 107-155, § 101; Final Rules, 67 Fed. Reg. at 49110-11, 49125.

Even if spending for recount activity were subject to BCRA as "federal election activity," Section 323(b) of the Act as amended by BCRA, which requires state, district, and local party committees, their agents, and entities they establish, finance, maintain, or control, to pay for "federal election activity" only with funds subject to the limitations and prohibitions of federal law, does not apply with respect to runoffs, recounts, or election contests resulting from pre-November 6 elections. Pub. L. No. 107-155, § 402; Final Rules, 67 Fed. Reg. at 49120 (subpart B of Part 300 of BCRA regulations, to be codified at 11 C.F.R. § 300.30 et seq., is not applicable with respect to runoffs, recounts, and election contests resulting from pre-November 6, 2002 elections); see also Pub. L. No. 107-155, § 101. As a result, the exception to the prohibition on the use of nonfederal funds for federal election activity, the "Levin amendment," and the rules that interpret these provisions, do not limit a state or local party committee's ability to spend recount funds after the November 5 general election. Id.

- 2) The Party Committees request the Commission to clarify that state and local party committees may raise recount funds for pre-November 6 elections after November 5, 2002.

The Party Committees understand, and request that the Commission clarify, that state and local party committees may, after November 5, 2002, establish a separate entity that may raise and spend recount funds in support of a federal candidate's recount efforts resulting from elections taking place before November 6,

Lawrence Norton, Esq.  
Federal Election Commission  
October 17, 2002  
Page 6

2002. The Party Committees understand that the relevant restrictions that BCRA places upon state and local party committees do not apply with respect to recounts resulting from federal elections taking place before November 6, 2002. See Pub. L. No. 107-155, § 402; Final Rules, 67 Fed. Reg. at 49120.

- 3) The Party Committees also request that the Commission clarify that a federal candidate may, pursuant to Commission precedent and subject to the rules of the United States House of Representatives and the United States Senate where applicable; establish a separate organization after November 5, 2002 that may raise and spend recount funds in the same way such an organization may under current law.

Because a recount is not a federal election, the Party Committees understand that neither BCRA nor the Commission's rules prohibit a federal candidate from soliciting, raising, or spending recount funds in support of a recount effort after November 5 as he may under current law. BCRA generally prohibits federal candidates and officeholders from soliciting, receiving, directing, transferring, spending, or disbursing nonfederal funds "in connection with an election for Federal office." Pub. L. No. 107-155, § 101; Final Rules, 67 Fed. Reg. at 49131. As recounts are not federal elections, recount funds raised and spent "in connection with" a recount are not subject to BCRA's ban.

The Party Committees believe, and seek clarification, that because federal candidates may raise and spend recount funds under BCRA, BCRA likewise does not prohibit a federal candidate from establishing a separate entity after November 5, 2002 that may raise and spend recount funds. The Party Committees request clarification that such an entity would not be a political committee under the Act, and could, after November 5, 2002, raise funds from federally permissible sources in increments exceeding the contribution limits established by BCRA. BCRA's general prohibition regarding federal candidates' activities "in connection with" a federal election also applies to a candidate's agents, and to entities that the candidate directly or indirectly establishes, finances, maintains, or controls. Pub. L. No. 107-155, § 101; Final Rules, 67 Fed. Reg. at 49131. As is the case with the prohibition on the activities of federal candidates, however, this ban applies only to activities carried out "in connection with" a federal election, not to activities carried out "in connection with" a recount.

Prohibiting a candidate from carrying out activities in support of a recount effort after BCRA takes effect would be contrary to Congress's clear intent that current law should carry forward with regard to recount efforts resulting from pre-November 6 elections, because a candidate will not know whether a recount effort is necessary until after the effective date. If a candidate cannot raise recount funds when a recount actually arises, after November 5, then the statutory allowance for November 5-related recount financing will have been rendered meaningless. Congress included in the law a specific statutory provision establishing that many of BCRA's provisions, including some of its most substantive provisions—those regarding electioneering communications and federal election activity of state and local party committees, for example—do not apply with respect to runoffs, recounts, and election contests resulting from pre-November 6 elections. Pub. L. No. 107-155, § 402. It also specifically enumerated payment for recount efforts as one of the permissible ways a national party committee may spend nonfederal money after BCRA takes effect. *Id.* Neither Congress in drafting and passing BCRA, nor the Commission in its implementing rules, evidenced an intent to alter the long-existing practice of allowing federal candidates to establish their own separate accounts which may raise and spend funds to support a recount.

- 4) If the Commission does not believe it is permissible for a candidate to set up such a fund after November 5, 2002, the Party Committees wish to confirm that a federal candidate who established a separate organization before November 5, 2002 that raises recount funds may exercise direction and control over that organization after November 5, 2002 should a recount become necessary.

Even if the Commission should conclude that a federal candidate may not, after November 5, 2002, establish a separate entity for the raising and spending of recount funds, the Party Committees request the Commission to clarify that a federal candidate may establish such an entity before November 5, 2002, under existing law, and exercise control over this separate entity after November 5, 2002. As articulated above, the Party Committees understand that this is lawful because the activities such an organization would carry out after November fifth would not be "in connection with" a federal election. Additionally, Congress evidenced no intent in its passage of BCRA to disallow a federal candidate from having control over the funds spent in support of his own recount effort.

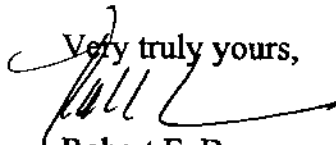
Lawrence Norton, Esq.  
Federal Election Commission  
October 17, 2002  
Page 8

- 5) Finally, the Party Committees request that the Commission explain what effect BCRA's contribution limits would have on any separate entity established by a national party committee, a state or local party committee, or a federal candidate for the raising and spending of recount funds.

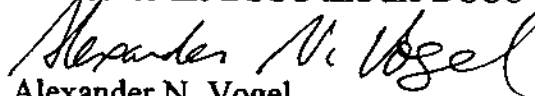
The Party Committees believe that under BCRA, the funds that these separate entities raise before November 5, 2002 will not be "contributions" under BCRA, see Explanation and Justification of the Disclosure Regulations, H.R. Doc. No. 95-44, at 40 (1977), and will not count against the contribution limits of the donors. Under current law, such an entity is not a political committee, and may raise funds in increments exceeding contribution limits as long as the funds are donated by federally-permissible sources. Continuing this practice after BCRA takes effect would be in keeping with the underlying principle, articulated by the Commission in its Explanation and Justification regarding BCRA's provisions as to nonfederal funds, that the Commission should ensure that "BCRA is not enforced in a retroactive manner with respect to activities that were legal when performed." Explanation and Justification for Final Rules, 67 Fed. Reg. at 49084-85.

Please do not hesitate to call the undersigned should you have any questions about this Request.

Very truly yours,



Robert F. Bauer  
Counsel to the DSCC and the DCCC



Alexander N. Vogel  
Counsel to the NRSC



Donald F. McGahn  
Counsel to the NRCC